

**IOWA BOARD OF EDUCATIONAL EXAMINERS**

---

**IN THE MATTER OF:**

**Kiaya Rickard-Urban,**

**Respondent.**

**Case No. 16-147/17BEE035**

**License No. 332834**

**Order Regarding Proposed  
Decision**

---

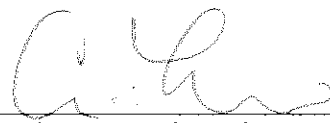
This matter came before the Board of Educational Examiners upon Complaint. An investigation was conducted and the Board found probable cause to move the case forward to hearing. A hearing took place before Administrative Law Judge Emily Kimes-Schwiesow on August 17, 2017. Judge Kimes-Schwiesow issued a proposed decision on September 8, 2017. The proposed decision was served upon the Respondent and the Board.

At its regular meeting on October 6, 2017, the Board voted to accept the proposed decision without modification. Neither party appealed within the time allowed by 282 Iowa Administrative Code 11.28(1).

**ORDER**

**THEREFORE**, the Proposed Decision in the matter stands as the Board's final ruling.

Dated this 9<sup>th</sup> day of October, 2017.

  
\_\_\_\_\_  
Dr. Ann Lebo, Executive Director  
On behalf of the Board

**Copies to:**

Kiaya Rickard-Urban (first-class mail and restricted certified mail)  
**RESPONDENT**

Jordan Esbrook (electronic mail)  
**ATTORNEY FOR STATE**

## IOWA BOARD OF EDUCATIONAL EXAMINERS

RECEIVED  
EXECUTIVE DIRECTOR  
BOARD OF EDUCATIONAL EXAMINERS

IN THE MATTER OF

)

DIA NO. 17BEE035

SEP 11 2017

)

CASE NO. 16-147

KIAYA RICKARD-URBAN

)

)

Respondent

)

PROPOSED DECISION

On June 6, 2017, the Iowa Board of Educational Examiners (Board) issued a Notice of Hearing and Statement of Charges against Respondent Kiaya Rickard-Urban, which charged her with being on school premises while under the influence of, possessing, using, or consuming alcohol, in violation of 282 IAC 25.3(2)(b). The hearing was held on August 17, 2017 at 9:00 a.m. The state was represented by Assistant Attorney General Jordan Esbrook. Respondent Kiaya Rickard-Urban appeared via telephone and was self-represented.

## THE RECORD

The record includes State Exhibits 1-8 (See Exhibit Index for description), the testimony of Shannon Bucknell, Mike Horihan, James Bleskacek, and Respondent Kiaya Rickard-Urban.

## FINDINGS OF FACT

Respondent was initially licensed by the Board on March 7, 1997. She currently holds a substitute license issued on May 31, 2012. On October 13, 2016, The Board received a complaint from the West Branch Community School District alleging Respondent was under the influence of alcohol while working as substitute in the high school on October 7, 2016. (Exhibits 3-4)

On October 7, 2016, students in Respondent's classroom reported to the principal's office that Respondent was not acting right and smelled of alcohol. Principal Shannon Bucknell accompanied Respondent to his office at approximately 12:55 pm. He detected the odor of alcohol on the Respondent and observed her to have a flushed face. Respondent acknowledged drinking alcohol the night before until the early morning hours, but denied drinking while at the school. Respondent did not have anything with her in the office and did not eat

or drink anything. Principal Bucknell called law enforcement and Police Chief Mike Horihan arrived at 1:30 p.m. Chief Horihan detected the odor of alcohol on the Respondent and administered a preliminary breath test (PBT). The test result was .192, well above the legal limit of .08. At 1:55 p.m. Chief Horihan took the Respondent with him to the Sheriff's Department for further testing. Respondent submitted to chemical testing by providing a breath specimen for the Datamaster test. The result was .161. Respondent was arrested for public intoxication. Chief Horihan was with the Respondent from 1:30 p.m. until she submitted to testing at 2:25 p.m. and did not see her eat or drink anything during that time. Chief Horihan was wearing a body camera throughout his interaction with the Respondent which is in evidence and supports his testimony. (Bucknell testimony; Horihan testimony; Exhibit 5)

Respondent testified that on the evening of October 6, 2016 she gathered with sorority sisters to celebrate homecoming at Coe College. She consumed four glasses of wine with her supper, and a glass of champagne after returning to her hotel. She went to bed around midnight and left at 7:00 a.m. on October 7, 2016 to get to work at West Branch High School. She had a large container of mouth wash in her car and poured it into an empty juice bottle to use during the day. Respondent reports she repeatedly put the mouth wash in her mouth every ten minutes all morning. She stepped into the hallway to spit it out in the water fountain. Respondent explained the mouth wash, which contains alcohol, helps to numb her throat. She was using it on October 7, 2016 because she felt a sore throat coming on. Respondent acknowledged she may have swallowed some of the mouth wash unintentionally. (Respondent testimony)

James Bleskacek has been a criminalist with the Department of Criminal Investigations (DCI) laboratory for over twenty years. He is responsible for the upkeep and training related to alcohol testing equipment utilized by law enforcement in the state of Iowa. Bleskacek confirmed that PBT devices are accurate when properly maintained and calibrated. The Datamaster test has been in use in Iowa for many years and is considered an even more reliable test than the PBT. Datamaster machines are evaluated annually by the DCI, and recalibrated with each use. Bleskacek reported that mouth wash can contain alcohol and may impact the results of the either the PBT or Datamaster if used within 15 minutes of the test. After 15 minutes, any alcohol in the mouth has dissipated and will not alter test results. (Bleskacek testimony)

Respondent entered a guilty plea to the charge of public intoxication. She contends her test results on October 7, 2016 are a mystery and denies consuming any alcohol other than mouth wash while at school. She wants to maintain her substitute license and continue working. (Respondent testimony)

### CONCLUSIONS OF LAW

The legislature created the Iowa Board of Educational Examiners with the exclusive authority to develop a code of professional rights and responsibilities, practice, and ethics.<sup>1</sup> The Board has promulgated its Code of Professional Conduct and Ethics at 282 IAC chapter 25. 282 IAC 25.3 provides in relevant part:

**282-25.3(272) Standards of professional conduct and ethics.**

Licensees are required to abide by all federal, state, and local laws applicable to the fulfillment of professional obligations. Violation of federal, state, or local laws in the fulfillment of professional obligations constitutes unprofessional and unethical conduct which can result in disciplinary action by the board. In addition, it is hereby deemed unprofessional and unethical for any licensee to violate any of the following standards of professional conduct and ethics:

...

**25.3(2) Standard II-alcohol or drug abuse.** Violation of this standard includes:

...

*b.* Being on school premises or at a school-sponsored activity involving students while under the influence of, possessing, using, or consuming alcohol.

The preponderance of the evidence established that Respondent violated 282 IAC 25.3(2)"b" when she was under the influence of alcohol on school property on October 7, 2016. At the time of this incident, Respondent was working as a substitute teacher at West Branch High School. Respondent has admitted to drinking alcohol the night before and to using mouth wash repeatedly while at school. She denies consuming alcohol at school. Students, Principal Bucknell, and Chief Horihan, all reported smelling the odor of alcohol on the Respondent

---

<sup>1</sup> Iowa Code section 272.2(1)(2017).

while she was at school. She submitted to a PBT, with a result of .192, and Datamaster breath test with a result of .161. Both results are well over the legal limit of .08. Respondent was in the presence of either Principal Bucknell or Chief Horihan from approximately 12:55 p.m. until 2:25 p.m. During that time period, she did not eat or drink anything. Testimony from DCI criminalist James Bleskacek indicates any alcohol contained in mouth wash dissipates from the mouth within fifteen minutes of its use and will not alter breath tests results. There is no evidence in the record indicating the PBT or Datamaster results are invalid.

In its closing argument, the state cited to a number of disciplinary actions that the Board has approved in recent years, which involved teachers or coaches who were using alcohol at school or at school events. In all of these cases, licenses were suspended for a minimum period of two years and in many of the cases the licensees were also required to take an ethics course. The state asserts that an appropriate sanction in this case is a license suspension for a minimum period of two years after which Respondent could request reinstatement.

It is clear that Respondent was intoxicated while working for the school district on school property. She was working directly with students as a substitute teacher. Based on these facts, a two year suspension is appropriate and consistent with the Board's recent disciplinary actions involving alcohol use by licensees on school property.

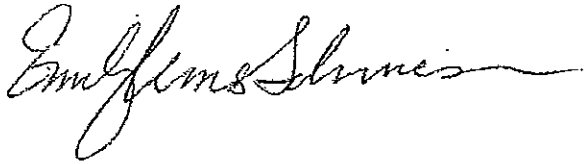
#### DECISION AND ORDER

IT IS THEREFORE ORDERED that the Iowa teaching license issued to Respondent Kiaya Rickard-Urban (Folder No. 332834) shall be SUSPENDED for a minimum of two years after which Respondent may request reinstatement pursuant to the provisions of 282 Iowa Administrative Code 11.34.

282 IAC 11.28 provides that a proposed decision may be appealed to the Iowa Board of Educational Examiners (Board) by a party to the decision who is adversely affected by serving a notice of appeal with the board within 30 days after issuance of the proposed decision. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify the parties initiating the appeal, the proposed decision or order appealed from, the specific findings or conclusions to which

exception is taken and any other exceptions to the decision or order, the relief sought, and the grounds for relief.

Dated this 8th day of September, 2017.

A handwritten signature in black ink, appearing to read "Emily Kimes-Schwiesow". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Emily Kimes-Schwiesow  
Administrative Law Judge

cc: Kiaya Rickard-Urban, Respondent (certified)  
Jordan Esbrook, Assistant Attorney General (local)  
Dr. Ann Lebo, Iowa Board of Educational Examiners (local)

**BEFORE THE BOARD OF EDUCATIONAL EXAMINERS  
OF THE STATE OF IOWA**

---

In the matter of	)	Case No. 16-147
	)	Folder No. 332834
<b>Kiaya Rickard-Urban,</b>	)	
	)	<b>NOTICE OF HEARING</b>
Respondent.	)	<b>AND STATEMENT OF CHARGES</b>

---

**YOU ARE HEREBY NOTIFIED** that the Iowa Board of Educational Examiners, exercising the jurisdiction conferred by Iowa Code chapters 17A and 272, has found probable cause of a violation of Board rules and ordered this matter scheduled for hearing.

**A. TIME, PLACE AND NATURE OF HEARING**

1. Hearing will be held on Tuesday, July 18, 2017, before Administrative Law Judge Margaret LaMarche, acting on behalf of the Iowa Board of Educational Examiners. The hearing shall begin at 9:00 a.m. in Department of Inspections and Appeals, Wallace State Office Bldg, Third Floor, 502 E. 9<sup>th</sup> Street (East 9th and Grand Avenue), Des Moines, Iowa. You should report to the third floor Iowa Department of Inspections and Appeals' (DIA) receptionist prior to 9:00 a.m. to obtain the room assignment.

2. Answer. Within twenty (20) days of the date of service of this Notice of Hearing, you are required to file an Answer specifically admitting, denying, or otherwise responding to the allegations included within the Factual Allegations. In that Answer, you should also state whether you will require an adjustment of the date and time of the hearing. A copy of the Answer shall be provided by the Respondent to the Assistant Attorney General identified below.

3. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 282 Iowa Administrative Code chapter 11. At hearing, you may appear personally or be represented by an attorney, at your own expense. You will be allowed the opportunity to respond to the charges against you. Each party will be allowed to testify, examine and cross-examine witnesses, and present documentary evidence. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence. If you need to request an alternative time or date for hearing, you must comply with the requirements of 282 Iowa Administrative Code rule 11.19.

If either party wishes to present telephonic testimony or to participate in the hearing by telephone, arrangements must be made at least ten (10) days in advance of the hearing date by filing a written request with the presiding Administrative Law Judge, Department of Inspections and Appeals, Wallace State Office Building, Des Moines, Iowa 50319, or by faxing a written request to (515) 281-4477. A copy of the

request for telephonic testimony must be served on the Board and all parties. Any resistance to the request for telephone testimony must be filed within five (5) days of service of the notice.

4. Pre-hearing conference. Either party may request a pre-hearing conference to discuss evidentiary issues related to the hearing. The Board rules regarding pre-hearing conferences are found in 282 Iowa Administrative Code rule 11.18.

5. Prosecution. The office of the Attorney General is responsible for prosecuting and representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to counsel for the State at the following address:

Jordan Esbrook  
Assistant Attorney General  
Iowa Department of Justice  
2<sup>nd</sup> Floor, Hoover State Office Building  
Des Moines, Iowa 50319  
Telephone (515) 281-7175

6. Communications. You may not contact Board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing or the pending charges. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve on all parties in the case. You should direct any questions about this proceeding to Dr. Ann Lebo, the Board's Executive Director, at (515) 281-5849 or to Assistant Attorney General Esbrook at (515) 281-8159.

## **B. SECTIONS OF STATUTES AND RULES INVOLVED**

### **Count I**

7. Respondent is charged with being on school premises or at a school-sponsored activity involving students while under the influence of, possessing, using, or consuming alcohol, in violation of 282 Iowa Administrative Code rule 25.3(2)(b).

## **C. JURISDICTION AND LEGAL AUTHORITY**

8. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 17A and 272. If any of the allegations against you are proven at hearing, the Board has authority to take disciplinary action against you under Iowa Code chapters 17A and 272, and 282 Iowa Administrative Code chapter 11.

## **D. FACTUAL CIRCUMSTANCES**

9. Respondent holds a Substitute License (FOLDER # 332834). Respondent's license is current and will next expire on June 30, 2017.

10. During all material events of this case, Respondent was employed as a substitute by the West Branch Community School District.

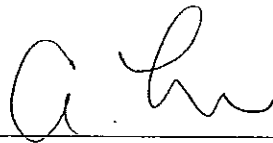
11. On October 13, 2016, the Board of Educational Examiners received a complaint against Respondent alleging various violations. On February 10, 2017, the Board found probable cause to proceed to hearing based upon the facts set forth herein and delineated in further detail within the complaint and investigation file compiled by the Board.

12. Investigation revealed that on October 7, 2016, Respondent was intoxicated at West Branch High School during the school day. A West Branch Police officer administered a breathalyzer test in the principal's office that showed a blood alcohol level of .192.

#### E. SETTLEMENT

13. This matter may be resolved by surrender of your license or an agreement to accept a lesser sanction. The procedural rules governing the Board's settlement process are found at 282 Iowa Administrative Code rule 11.4(6). If you are interested in pursuing settlement of this matter, please contact the Assistant Attorney General identified in Section A, above.

Dated this 2<sup>nd</sup> day of May, 2017.



---

Dr. Ann Lebo, Executive Director  
Iowa Board of Educational Examiners

Copies to:

Kiaya Rickard-Urban (first-class mail and restricted certified mail)  
RESPONDENT

Jordan Esbrook (electronic mail)  
ATTORNEY FOR STATE